

**The Faulkner Hospital and Joseph F. Hallisey. Case
1-CA-20404**

24 May 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 11 January 1984 Administrative Law Judge Bernard Ries issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

BERNARD RIES, Administrative Law Judge. This case was heard in Boston, Massachusetts, on May 4-5, 1983.¹ The sole allegation in that the Respondent refused to re-employ the Charging Party in the latter part of 1982 because of his protected activities in 1978 on behalf of Local 877, International Union of Operating Engineers (hereafter the Union).

Briefs have been filed by the parties. After careful consideration of the entire record, the briefs, and my recollection of the demeanor of the witnesses, I make the following findings of fact, conclusions of law, and recommendation.²

Joseph Hallisey began employment with the Respondent in October 1975 as a medical technician in the Respondent's emergency room, but he transferred to a position as a mechanic in the maintenance department in early 1977. Around mid-1978, Hallisey initiated a campaign on behalf of the Union among the maintenance em-

ployees. Before the issue of representation was resolved, however, the Respondent mooted the problem by, in May 1979, subcontracting to a firm named BALCO, Inc. all of its "facilities" work.³ The Union filed a charge in connection with this subcontract, but no complaint was issued by the Region.

Hallisey testified that his sponsorship of the union campaign in 1978 and thereafter was well known to the Hospital and, more specifically, to David A. Folker, Respondent's vice president for operations. Hallisey gave uncontroverted testimony about repeated conversations between himself and Folker regarding the Union in which Folker had revealed his intense dislike of this particular labor organization ("If you are gonna get a union, why don't you go and get a good fucking union, instead of these people") and his mental association of Hallisey with the Union (after a scuffle on a picket line which was maintained for some 6 weeks following the May 1979 terminations, Folker pointed to Hallisey and said, "You're to blame for all of this"). Folker did not testify and therefore did not deny any of Hallisey's allegations on this score, although Folker did give a prehearing deposition on other matters which is in evidence.⁴

There is certainly no reason to disbelieve Hallisey's undenied testimony about Folker's display of hostility toward him and the Union. Moreover, on the issue of Respondent's knowledge of Hallisey's role in the union campaign, I note that a position paper submitted by the Respondent in this proceeding "admits" that Hallisey "was involved in union activity at the Hospital a number of years ago."

After being terminated by the Respondent in 1979, Hallisey held various employments.⁵ In 1982, the Respondent decided to eliminate BALCO and return to the direct owner-operated method of facilities management. To that end, the Respondent notified BALCO that their contract would be terminated (apparently effective October 31, 1982) and, on Sunday, September 19, placed an advertisement in a local newspaper announcing the availability of various positions, including "Maintenance Mechanics."⁶ The ad further asked applicants to apply in person to Respondent's Human Resources Department on September 21-23 (Tuesday-Thursday).

Hallisey did not see the Sunday ad, but on the following Thursday, he chanced to meet an employee of Respondent who told him that the Respondent was hiring facilities employees, including those doing the kind of work Hallisey had once performed. Hallisey thereupon called the Human Resources Department; he was told by

³ I.e., operation and maintenance of the power plant, mechanical and systems maintenance in general, and groundskeeping.

⁴ Folker left Respondent's employ on March 11, 1983, and was deposed in Boston on March 24, a few days before he was to assume a new position in Pittsburgh. Why Folker was not required to make the trek from Pittsburgh to Boston for this May hearing is unclear.

⁵ He and the other employees were offered an opportunity to apply for work with BALCO, a unionized firm, but Hallisey and most of the others chose not to do so. All employees who did apply for such work were hired. Hallisey was not employed for some 17 months after leaving Respondent's employ.

⁶ The other positions were assistant director maintenance manager, lead mechanic, grounds supervisor, HVAC mechanics, electrician, electrician apprentice, power plant engineers, painter, and grounds persons.

¹ The charge was filed on November 4, 1982, and the complaint issued on December 21, 1982.

² Certain errors in the transcript are hereby noted and corrected.

someone in the office that he could still file an application the next day.

On Friday morning Hallisey went to the Hospital, entered the Human Resources Department, asked the receptionist for an application, received one, sat down at a desk adjoining the receptionist's, and began filling out the application. Soon after doing so, three Hospital officials (Director Douglas Fairfax, Acting Director of Human Resources Mary Irwin, and Director of Human Relations Mimi Iantosca) entered the reception area one by one and engaged Hallisey in what was, by everyone's account, cordial conversation. According to Hallisey (and this qualification should be noted), after the three left, he completed the application and handed it in to the receptionist.

He asked the latter to set up an interview, but she said that was not being done, and that he would be called. Hallisey looked into the office of Mary Irwin and bade her goodbye; he then went down to the emergency room to look in on a former colleague; he thereafter went to the nearby switchboard to visit another former colleague, Sue Comier, who, he had shortly before been told by one of the ex-coworkers in the Human Resources Department, was now working in the switchboard room; and he then left the hospital.

Hallisey testified that he called the Human Resources Department about a week later to ask if all the positions had been filled and was told that they had been. Apparently around this time, he once again ran into the employee who had originally told him about the hiring of facilities employees; he informed Hallisey this time that the Hospital would not be taking over the operation on October 1, as he thought was originally planned, but rather would wait another month. Hallisey then decided to give Respondent until the end of October to see if "they were going to call." When no such call was forthcoming, Hallisey filed a charge on November 4.

In a traditional refusal-to-reemploy case, we would now turn to an examination of Respondent's merit-related reasons for deciding not to rehire an experienced and evidently competent former employee when it reassumed control over the facilities work in October 1982. But the present case takes an unusual twist at this point, because it is Respondent's position that while Hallisey did appear in the personnel office on September 24, he did not actually file an application at that time, or thereafter.

Testimony to the foregoing effect was given, or meaningfully supported, by three of Respondent's employees. Much of their testimony was similar to that given by Hallisey as to his conversations with two of them while he was at the office on September 24.

Mary Irwin, acting director of the Human Resources Department, testified that on that Friday, from her office right off the reception area, she heard Director Douglas Fairfax, speaking to Hallisey, and she walked out of her office and greeted Hallisey, whom she had known from his previous employment.⁷ They engaged in some small

talk, and Irwin brought up the subject of Sue Comier, who was an old friend of Hallisey's and who evidently had been away for a while. Irwin suggested that she call Comier to check on her availability so that Hallisey might go to visit her, and get Hallisey's suggestion, Irwin told Comier only that a "surprise" visitor would be coming to see her.⁸

At that point, Irwin testified, Hallisey probably made some motion indicating an intention to leave, and Irwin asked him if he wanted an envelope. She found a stamped, Hospital-addressed envelope in the receptionist's area, handed it to Hallisey, and then returned to some unfinished business in her office.⁹ Irwin did not testify that she saw Hallisey leave at that time, but she did recall that some 20-30 minutes later, Hallisey appeared at her door to say goodbye.¹⁰

In his testimony, Hallisey said that another prior acquaintance, Mimi Iantosca, had also come into the personnel reception area briefly to speak to him on September 24. For some unknown reason, Iantosca was not called as a witness by the Respondent but was called as a rebuttal witness by the General Counsel; her testimony, however, proved to be most helpful to the Respondent.¹¹

Iantosca, Respondent's director of human relations since 1976, testified that she had been standing in Irwin's office doorway on September 24 when she noticed Hallisey sitting at the table. She spoke with him for a while and was present when Fairfax came and left, and then when Irwin came out to say hello. Iantosca did not recall seeing Irwin hand an envelope to Hallisey, but she did retain a "quite clear" recollection of Irwin saying, just as Iantosca was leaving the scene, "something about don't worry, you can take that with you and you can send it to us."

Finally, there was the testimony of Ellenmarie Rhone, who works as one of the three personnel representatives in the Human Resources Department; her duties primarily consist of processing applications for employment.

Rhone began employment with Respondent in 1980 and thus had not previously known Hallisey. She testified that she had been in Irwin's office (together with Iantosca) on the morning when Hallisey appeared, and she described watching Iantosca, Fairfax, and then Irwin speak to Hallisey. As for the Irwin-Hallisey conversation, Rhone recounted the discussion about Comier and then testified that Irwin had asked if Hallisey wanted an envelope. When he said he did, Irwin "got him an envelope and handed it to him," whereupon Hallisey "picked

⁸ Hallisey testimonially confirmed the call to Comier by Irwin and that he made a signal to Irwin to keep his identity a secret from Comier.

⁹ Shirley Silverstein, the receptionist and a very believable witness, recalled that Hallisey came in and got an application, but could not remember whether she stayed at her desk thereafter or left on other business. She did not remember that Hallisey turned in an application.

¹⁰ As earlier stated, Hallisey testified that he did stop at her office to bid Irwin farewell, but that it occurred only moments after he handed his completed application to the receptionist, which was very soon after Irwin returned to her office.

¹¹ It may be that the Respondent was saving Iantosca for surrebuttal to Hallisey's anticipated rebuttal testimony.

⁷ Hallisey testified that not "more than 30 seconds" after he entered the office, Fairfax had walked in and the two men had a friendly chat in which, *inter alia*, Hallisey had asked if he had a chance at employment "considering what has happened in the past with the union" and Fairfax had replied, "That's all in the past. That's got nothing to do with this."

up his application and he left the office." Rhone was, when asked, "very sure" of the latter fact.

On rebuttal, Hallisey denied that he had ever received an envelope from Irwin, and reiterated that he had left his completed application with the receptionist prior to his departure from the office. He also did not recall Rhone being in the area while he was there.

In ordinary circumstances, and with typical witnesses appearing for Respondent, there is little doubt in my mind that I would resolve such a conflict in favor of Hallisey. For one thing, I thought him an excellent witness, bright, honest, and open. For another, his story obviously has a strong logical appeal. Given that Hallisey went to the effort of making the trip to the Hospital on September 24 in order to apply for a job, and that he knew (having dug the ad out of the Sunday paper) that he was already 1 day late in applying, it seems unlikely that he would have left the office without having completed and handed in the standard two-page application. Moreover, as the General Counsel argues, one would suppose that if Hallisey really wanted the job, he would hardly choose the unpredictable route of first failing to file an application and then hoping to obtain a Board judgment that he had been discriminated against; rather, he would first be sure to apply for the job and, if squarely and unambiguously rejected, only then seek to convince the Board that the rejection was discriminatory.

The obstacle to applying this clearcut, straightforward, and appealing approach is that it requires a concomitant conclusion that Irwin, Iantosca, and Rhone were lying, and lying collusively at that. Such a judgment is one which I am most reluctant to make here.

I found these three witnesses to be *extremely* impressive people. They did not, like many dissembling witnesses, scowl, mumble, assume a defensive posture, seem to be burdened with some secret internal weight, or otherwise convey a sense of oppressive guilt about their testimony. Nor did they strain to affect the controlled calm or calculated insouciance which is not infrequently observed. To the contrary, these three women were quite cheerful, spontaneous, interested (to the point of being wide-eyed) in the novel situation in which they found themselves, and seemingly not the least bit conscious of any pressure, either internal or external.¹²

Accordingly, I find it very difficult to conclude that the three witnesses came together with themselves or others in some manner and conspired to fabricate out of whole cloth a story about Hallisey being given an envelope (Irwin), being told that he could mail in the application (Iantosca), and walking out of the office with application and envelope in hand (Rhone). I am sure that I do not possess any greater insight into the human personality than the next person, and I may be completely wrong about these three witnesses. But I am truly hard put to believe that Respondent would happen to have on its payroll three employees who all at the same time (1)

were strategically placed with regard to this incident, (2) were willing to lie about the matter, and (3) were capable of uttering those lies with such cogent believability and equanimity.

Not that there are not some grounds for suspicion in addition to Hallisey's own impressive appearance and the logical arguments earlier discussed. The record shows that although Irwin and Iantosca gave pretrial statements to a Board agent in November, those statements make no mention of Hallisey's having been given an envelope by Irwin. But both witnesses testified that the Board agent did not address this issue, instead asking "structured" (Irwin) and "specific" (Iantosca) questions. Since the pretrial statements were not offered in evidence, I have no way of determining whether the witnesses were questioned by the Board agent in any way which might reasonably have led to a disclosure by them that Hallisey was given an envelope.¹³

Other circumstances pointed out by the General Counsel on brief require a certain amount of background.

When Respondent decided in 1982 to revert to direct employment of the facilities employees, it hired Robert F. Campbell, who was then a BALCO employee, to be the director of facilities services for the Hospital, in which capacity he would report directly to Vice President Folker. Campbell did not begin employment with Respondent until around October 15, and, prior to that time, Folker was himself personally involved in the effort to hire facilities employees. Folker testified, however, that his involvement was limited to screening and interviewing the current BALCO employees who, he thought, were potentially the most desirable employment prospects, since they would be familiar with the operations. The record indicates that prior to the September 21-23 public application period, Respondent's personnel representatives interviewed a number of BALCO employees, and by letter of October 7, Folker offered jobs to several of them.¹⁴

But Folker testified that he confined his participation to the hiring of BALCO employees, and had nothing to do with those employees who applied during the September 21-23 advertised period. The testimony of receptionist Silverstein and Mary Irwin is that the overwhelming response to the September 19 ad—perhaps 200 applicants—caused Silverstein, after the morning of September 22, to stop arranging appointments for preliminary

¹² Rhone was never interviewed by the Board agent.

¹³ For example, when counsel for the General Counsel preliminarily sought permission to cross-examine Irwin as an adverse witness pursuant to Sec. 611(c) of the Federal Rules of Evidence, Irwin politely interrupted to inquire as to what "a 611(c)" is. It was an example of the kind of interested and unselfconscious ease which marked the appearance of all three witnesses.

¹⁴ Robert Campbell testified that the total number of facilities employees to be hired was 23. It appears that the maintenance mechanic positions for which Hallisey might have qualified were few. General Counsel entered in evidence documents relating to nine employees who were described as all of the "skilled employees" (though "not the entire complement of the . . . maintenance and grounds department") hired by Respondent since September 1982. On those nine, five were hired in October and November as "maintenance mechanics" (a sixth, hired as a groundskeeper, was transferred to that classification in March 1983 when one of the original mechanics left). The others were hired as a painter, an electrician, and an electrician's apprentice. Of the five mechanics first hired, three were already working at the hospital for BALCO. Thus, it would appear that only two employees were hired from the outside into Hallisey's classification. Receptionist Silverstein testified that over 60 applications for the maintenance mechanic positions were received in response to the September 19 ad.

interviews of the applicants by the three personnel representatives, as she had been doing. From that point on, instead, Silverstein simply accepted the applications as they came in and put them in a separate file folder; none of these later applicants assertedly ever received an appointment with a personnel representative, as the earlier applicants had (it apparently took about 2 weeks to interview the first rush of prospects who did receive appointments). Had Hallisey actually filed an application, according to this testimony, he would not have been awarded a preliminary interview with a personnel representative; the explanation given is that Respondent never dipped into the file of later applicants as a potential source of employees, but instead limited employment consideration to the first 100 or so applicants who actually received the threshold screening by the personnel representatives.

While the General Counsel notes that the "disappearance" of Hallisey's application could have been "caused by anyone," he theorizes that the "record as a whole seems to point in one direction and that is to David Folker." As indicated, Folker testified on deposition that he did not review the applications of non-BALCO employees; he did, however, concede giving the *screened* non-BALCO applications to Campbell shortly before the time the latter joined the Hospital. The General Counsel argues that the evidence suggests that Folker actually had possession of *all* the applications and that it probably was at this point that Folker may have seen and destroyed Hallisey's application.

Mary Irwin's pretrial affidavit states broadly that her office gave Folker the "applications," which he "examined." She testified, however, that the applications to which she referred were those from BALCO employees and those from applicants who had already received a preliminary interview with a personnel representative (and also that she simply "assumed" that Folker had examined the latter as well as the former). There is no objective reason not to believe this testimony. It seems reasonable to think that when Campbell came to work around October 15, looking toward a staffing date of November 1, he would have limited his initial interest (and his own round of personal interviewing) to that group of employees who had already been interviewed and approved by the personnel representatives. And it seems quite likely that when Irwin made a general reference in her pretrial statement to Folker getting the "applications" for transmission to Campbell, she had no particular reason to think that she should be more precise.¹⁵

There is, however, a more serious inconsistency pointed out by counsel for the General Counsel. Campbell testified that in October, perhaps between October 1 and 15, Folker told him, in describing the "tremendous" response to the September 19 advertisement, that Hallisey "had been in to personnel."¹⁶ According to Campbell,

Folker said nothing else on the subject (Campbell apparently made an "assumption" that Hallisey had come to apply for a job).

In his deposition, however, Folker was asked if he had "discuss[ed]" Hallisey with Campbell prior to the filing of the November 4 charge, and Folker replied, "No. I had no reason to." Subsequently, when asked again if, between 1979 and the filing of the instant charge, Hallisey's name had "ever come up in any context with anybody at the hospital," Folker replied, "Not to my knowledge." To a followup question as to whether he had "any conversations with anybody about Hallisey," Folker answered, "I may have, but I don't recall any."

It seems most likely that Folker was lying here. While he was undoubtedly a busy person, apparently having several hundred employees under his jurisdiction, it does not seem probable that he would simply have forgotten in March that he himself had brought up with Campbell in October the fact that Hallisey had been "in to personnel."¹⁷

That Folker evidently lied on this point is a substantial circumstance. It could, of course, signal a guilty desire to cover up. This particular kind of misrepresentation, on the other hand, could be construed as the sort of defensive reflex which is occasionally seen; while it tells us something about the character of the witness, it does not necessarily give rise to an automatic inference of unlawful motive.

Of some interest here is the fact that Campbell revealed this information at the hearing. There is nothing in the record to indicate that Campbell was under some known compulsion (such as an admission in his pretrial affidavit) to make this revelation. Moreover, Campbell's testimony shows that he had read Folker's deposition prior to the hearing, and so he very probably recalled that Folker had denied having had any such discussions with Campbell about Hallisey. Despite that, Campbell apparently felt constrained to contradict Folker at the hearing, even though there were no other witnesses to their discussion and he presumably could have felt free to agree with Folker's denial. This seems to confirm my feeling at the hearing that Campbell appeared to be an honest witness, and his testimony that he did not see Hallisey's application and knew nothing about it is, I think, enhanced by this piece of testimony.¹⁸

While, as earlier noted, there seems considerable logical substance in the General Counsel's position, there is also a logical contention which favors the Respondent. The obvious question arises as to why Folker or anyone else would get involved in the risky and complicated business of denying that Hallisey had filed an application when they could have rested on the vastly simpler argument—as in fact the Respondent also has done—that Hallisey's tardy application went into the limbo of the

¹⁵ Again, the absence of Irwin's affidavit from the exhibits file makes it somewhat difficult to assess the detail in her statement and how exact one might expect it to be.

¹⁶ Campbell had known Hallisey slightly during the earlier period of employment at the Hospital.

¹⁷ Still, it is unfortunate that Folker was not required to appear at the hearing so that this matter could have been more thoroughly explored.

¹⁸ Campbell also took issue head on with the statement in Folker's deposition that Campbell had interviewed a few applicants before October 15. The point is not important and Campbell's denial could only have had the foreseeable effect of casting some general doubt on Folker's testimony; Campbell did it anyway.

unscreened applicants file which was thereafter never referred to for purposes of seeking out prospects.¹⁹ This would seemingly have appeared to be a reasonably safe and tight contention which, so far as the testimony came out at the hearing, no one is in a position to contradict. To take the additional position that Hallisey did not apply in the first place, and to fortify that position by assertedly enlisting the prejudicial testimony of three employees, seems a deranged and dangerous—and clearly unnecessary—way to defend this case.

As earlier discussed, the General Counsel argues that Hallisey would have been foolish *not* to actually file an application, since that would have given him one *legitimate* chance at the job and then, if appropriate, he could have filed a charge, hoping to obtain the job with the help of the Board. That argument has persuasive force, but it does not take account of all the possibilities. One is that a straightforward rejection of an acknowledged application is not so easily shown to be an unlawful act, while a claim that an application was filed and mysteriously misplaced introduces a whole sinister element into the mix. Hallisey did not in the least impress me as having such a Machiavellian turn of mind (or such an understanding of the workings of the law), but that does not erase the inherent validity of the argument.

Another possibility lies somewhere in the middle ground. Hallisey might have accepted the envelope and carried off the application before finishing it for the reason that, as Iantosca recalled him saying, he was "nervous" in the reception area; perhaps he wanted to reconsider his decision to apply once he was actually present at the Hospital, and perhaps it would have occurred to him that an application filed on a Friday that late in the application process would not get any quicker attention than an application mailed on Saturday and received by Respondent on Monday. He might then have decided to mail in the completed application, which would have allowed him to have subsequently felt morally justified in filing the charge with the Region. But, having assumed that the postal service had made its appropriate rounds, Hallisey might have neglected to mention this slight deviation in his statement to the Board and then found it difficult to back away when the Respondent claimed that it had received no application (the disappearance of which might be attributable to more than one cause). The foregoing is utter speculation; but it does offer a scenario which is somewhat more consistent with my impression of Hallisey and the logic of the situation. And counsel for the General Counsel, of course, could not, if he wanted to (and he has not indicated that he does) rely on such a possibility, since Hallisey has so firmly committed himself to another position.²⁰

¹⁹ Irwin testified that she did look through this file in early October, at the request of another hospital administrator who was checking to see if employees of the latter's hospital had applied for jobs with Respondent. Irwin said that while she saw an application from Jerry McAuliffe, a former employee, in this file, she did not recall anything from Hallisey.

²⁰ While, as I have earlier stated, it seems logical to me that Hallisey would have filed his completed application on September 24, experience and the Bard have taught me that "there are more things in heaven and earth, Horatio, than are dreamt of in your philosophy." *Hamlet*, Act I, Scene 5.

Respondent alternatively argues that even if Hallisey did file an application on September 24, he would not have been hired in any event. The argument is based on the evidence, earlier recited, that none of those who applied after Wednesday morning (which would have included Hallisey) were ever considered for a job.

As General Counsel contends, if Hallisey's application had been deliberately discarded because of his past union activities, that conduct would clearly constitute proscribed discrimination under Section 8(a)(3). And if there had been a calculated refusal to consider Hallisey for such a reason, it might well be that he simply could not be treated as another "unscreened" applicant. For one thing, any conclusion that a pervasive conspiracy to defraud existed between Folker, Campbell, Irwin, Iantosca, and Rhone would call into serious doubt the veracity of all the otherwise uncontradicted testimony by Respondent's witnesses in this case, including the claim that there was a file of later applicants whose applications were never reviewed. For another, the very fact that Hallisey's application was removed and discarded would suggest that he was, in effect, considered and then rejected for reasons which the statute does not tolerate. In such a setting, it might well be that the Board would resolve against the wrongdoer any ambiguity as to the possible outcome.²¹

I have given a great deal of thought to this very troublesome case. Recognizing the strong gravitational pull exerted by both Hallisey's winning demeanor and what seem to be the superior probabilities, I have nonetheless decided that I simply cannot conclude that Irwin, Iantosca, and Rhone committed perjury by testifying about Hallisey and the envelope; they were too overwhelmingly impressive.²²

²¹ Campbell testified that he did not think he would have hired Hallisey had he reviewed his application, because an application filed by Hallisey on November 26 (after General Counsel had been told by Respondent that it had never received an application from him) was not impressive. Campbell pointed out that Hallisey was not employed from May 1979, when he left Respondent, for 17 months until October 1980, then worked for 6 months, and then 3 months later became self-employed on a part-time basis; Campbell said this was not a "good work record." While, as General Counsel points out on brief, some other employees apparently hired by Campbell had periods of unemployment, it is not clear that their employment history was as spotty as Hallisey's. Campbell also criticized the fact that the November 26 application was incorrectly filled out or not filled out at all. That is an accurate evaluation. For example, Hallisey wrote the names of the schools he attended in the blocks designated "Type of School" instead of under "Name and Address of School"; he omitted the initial "year attended" of high school; he put his starting dates for various jobs in the blocks in which he should have entered "Salary"; and so forth. One wonders about the extent to which such matters play a role in hiring decisions; I cannot say that they may not mean something. In any event, Campbell's assessment was a theoretical speculation elicited on cross-examination.

²² Another fact which strikes me as tending to negate the claim of fabrication is that Irwin did not recall Iantosca being in the reception area when Irwin was speaking to Hallisey (although Iantosca, of course, says that she was), and Iantosca did not remember Rhone being present at the time (although Rhone, of course, says that she was, and Irwin further testified that Rhone was "definitely" there). Conspirators often contradict each other; but for a conspiracy of perjurers to form without even reaching agreement on something as basic as who was present at the critical time would seem most unusual.

If I thus find that Hallisey did not file the application on September 24,²³ and he does not say that he filed it at any other time or in any other way, I must then conclude that he never applied. With that conclusion, of course, it follows that Respondent did not violate the Act by refusing to reemploy him, and dismissal of the allegation is required.

I have, obviously, imposed a considerable amount of trust here in the impression made upon me by Irwin, Iantosca, and Rhone. They either told the truth or they lied; the basic contradiction here cannot be assigned to error. If they lied, one assumes that they will continue to be aware of that haunting fact for many years; if they told the truth, they have performed their civic duty.

²³ I might note that Hallisey testified twice that he was in the personnel office for only about 5 minutes. While I would not hold any witness to such an estimate in such circumstances, his other testimony is that he spoke for "at most a couple of minutes" with Fairfax during that time, and also conversed with Irwin and Iantosca. It does seem possible that he would not have filled out the form and done all the talking within the space of 5 or 10 minutes.

CONCLUSIONS OF LAW

1. Respondent, the Faulkner Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Union of Operating Engineers, Local 877, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate the Act as alleged in the instant complaint.

On these findings of fact and conclusions of law, I issue the following recommended²⁴

ORDER

The complaint in this proceeding is dismissed.

²⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.